

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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COLBERT NICHOLS,

Petitioner,

v.

ISIDRO BACA, et al.,

Respondents.

Case No. 3:13-cv-00671-MMD-WGC

ORDER

The Court directed petitioner to file a second amended petition that corrected the defects of the first amended petition. Petitioner has filed a motion for leave to file an oversized petition (dkt. no. 13), which the Court grants, and a second amended petition (dkt. no. 14). The Court has reviewed the second amended petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The Court will dismiss one ground, and the Court will serve the second amended petition upon respondents for a response to the remaining grounds.

Ground 15 of the second amended petition is a claim of error in the state post-conviction habeas corpus proceedings. “[A] petition alleging errors in the state post-conviction review process is not addressable through habeas corpus proceedings.” *Franzen v. Brinkman*, 877 F.2d 26, 26 (9th Cir. 1989); *see also Gerlaugh v. Stewart*, 129 F.3d 1027, 1045 (9th Cir. 1997). The Court dismisses ground 15.

1 Petitioner has submitted a motion for clarification (dkt. no. 10). He explains that
2 the first amended petition, with three grounds, was filed in error, but he does not request
3 any particular relief. By the Court's calculations, all the grounds in the second amended
4 petition are timely by themselves without needing to determine whether they relate back
5 to an earlier petition. The motion for clarification is moot.

6 Petitioner has submitted a motion for appointment of counsel (dkt. no. 11).
7 Nothing in the motion would cause the Court to depart from its denial of petitioner's
8 earlier motion for appointment of counsel.

9 Petitioner has submitted a motion for evidentiary hearing (dkt. no. 12). The Court
10 cannot determine at this stage of the proceedings whether an evidentiary hearing will be
11 necessary. The Court denies the motion.

12 It is therefore ordered that petitioner's motion for clarification (dkt. no. 10) is
13 denied as moot.

14 It is further ordered that petitioner's motion for appointment of counsel (dkt. no.
15 11) is denied.

16 It is further ordered that petitioner's motion for evidentiary hearing (dkt. no. 12) is
17 denied as moot.

18 It is further ordered that petitioner's motion for leave to file oversized petition (dkt.
19 no. 13) is granted.

20 It is further ordered that ground 15 of the second amended petition (dkt. no. 14)
21 is dismissed.

22 It is further ordered that the Clerk of Court shall add Catherine Cortez Masto,
23 Attorney General for the State of Nevada, as counsel for respondents.

24 It is further ordered that the Clerk of Court shall electronically serve upon
25 respondents a copy of the second amended petition (dkt. no. 14) and this order. In
26 addition, the Clerk of Court shall return to petitioner a copy of the second amended
27 petition (dkt. no. 14).


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1 It is further ordered that respondents shall have forty-five (45) days from the date
2 on which the petition was served to answer or otherwise respond to the petition.
3 Respondents shall raise all potential affirmative defenses in the initial responsive
4 pleading, including lack of exhaustion and procedural default. Successive motions to
5 dismiss will not be entertained. If respondents file and serve an answer, then they shall
6 comply with Rule 5 of the Rules Governing Section 2254 Cases in the United States
7 District Courts, and then petitioner shall have forty-five (45) days from the date on which
8 the answer is served to file a reply.

9 It is further ordered that any exhibits filed by the parties shall be filed with a
10 separate index of exhibits identifying the exhibits by number or letter. The CM/ECF
11 attachments that are filed further shall be identified by the number or numbers (or letter
12 or letters) of the exhibits in the attachment. The hard copy of any additional state court
13 record exhibits shall be forwarded — for this case — to the staff attorneys in Las Vegas.

14 It is further ordered that henceforth, petitioner shall serve upon respondents or, if
15 appearance has been entered by counsel, upon the attorney(s), a copy of every
16 pleading, motion or other document submitted for consideration by the Court. Petitioner
17 shall include with the original paper submitted for filing a certificate stating the date that
18 a true and correct copy of the document was mailed to the respondents or counsel for
19 the respondents. The Court may disregard any paper received by a district judge or
20 magistrate judge that has not been filed with the Clerk of Court, and any paper received
21 by a district judge, magistrate judge, or the Clerk of Court that fails to include a
22 certificate of service.

23 DATED THIS 20th day of November 2014.

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27 MIRANDA M. DU
28 UNITED STATES DISTRICT JUDGE